



Resma Commercial Agencies v Ngata (Suing as the Legal Representative of the Estate of Leah Wangui Ngata - Deceased) & another (Civil Appeal (Application) 16 of 2019) [2025] KECA 1398 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KECA 1398 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) 16 OF 2019
PO KIAGE, JA
JULY 31, 2025

BETWEEN

RESMA COMMERCIAL AGENCIES APPLICANT

AND

JOEL KARUBA NGATA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LEAH WANGUI NGATA - DECEASED) 1ST RESPONDENT

FRANCIS NGATA KINGORI 2ND RESPONDENT

(An application for orders of revival of the abated appeal against the 2nd respondent)

RULING

1. By the motion on notice dated 8th April 2025, brought under Rule 102 of the [Court of Appeal Rules, 2022](#), the applicant Resma Commercial Agencies (*sic*) seeks the following orders;
 - (a) That this application be certified urgent and heard *ex-parte* in the first instance.
 - (b) That this Honourable Court be pleased to revive the abated appeal against the 2nd respondent serialized as Nakuru Court of Appeal Civil Appeal No. 16 of 2019 Resma Commercial Agencies -vs- Joel Karumba Ngata (Suing as the Legal Representative of the Estate of the late Leah Wangui Ngata (Deceased) & Another.
 - (c) That this Honourable Court be pleased to substitute the 2nd respondent herein Francis Ngata Kingori (Deceased) with the Administrator of his Estate Joel Karumba Ngata as the 2nd respondent.
 - (d) That the costs of this application be provided for.”



2. The application is founded on grounds on its face, which are replicated in the supporting affidavit of the applicant's Director Samuel Kimani Maigua, expressed as sworn on the said 8th April 2025. In essence, it is averred that the 2nd respondent died "approximately two years ago" before the hearing and determination of the appeal, and that when it came up for hearing, on 12th June 2024, it was marked as abated against the said respondent. The applicant then began the process of citing the 1st respondent to take out letters of administration, as he is the 2nd respondent's son. The applicant, however, discovered that the 1st respondent had, in fact, already obtained letters of administration intestate, in respect of the 2nd respondent's estate. It is then urged, rather obliquely, that

"it is in the interest of justice that the court revives the abated appeal and enlarges the time for substitution of the deceased with the applicant (*sic*) to ensure that the appeal is heard on merit."

3. The motion before me is not one to enlarge time for substitution. In fact, there never is need for one to apply for enlargement of time because Rule 102 of the Rules of Court has a built-in mechanism to deal with delays. The rule is in the following terms;

"102.

- (1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased person to be made a party in place of the deceased.
- (2) If no application is made under sub-rule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall abate.
- (3) The person claiming to be the legal representative of a deceased party or an interested party to an appeal may apply for an order to revive an appeal which has abated and, if it is proved that the legal representative was prevented by sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit."

4. It is clear from the text of the rule that upon the death of a party to an appeal, substitution is required to be obtained within 12 months, failing which the appeal abates, as happened in this case.

5. Such abatement is not necessarily the end of the story, however: the person claiming to be the legal representative of the deceased party, or an interested party to the appeal, may apply for an order to revive the abated appeal, as the applicant has done by this application.

6. Revival of an abated party is not automatic, however: the application is required

"[to prove] that the legal representative was prevented by sufficient cause from continuing the appeal."

Should such proof be furnished, the Court shall revive the appeal and it may, in doing so, impose terms as to costs, or otherwise, at its discretion.



7. It seems to me unarguable that the exceptional discretionary relief of reviving an abated appeal can only issue upon satisfaction of the conditions stated in the sub rule, namely; proof must be supplied that the legal representative was prevented, not by just any reason, but by sufficient reason, from continuing with the appeal. In other words, it must be shown why he was not able to do so, and flimsy excuses or no reason at all, cannot suffice, without doing violence to the rule.
8. I have already set out the tenor of the grounds and the supporting affidavit. Nowhere is it stated, even in the softest whisper, why it is that the legal representative, who was already a party to this appeal, was prevented from continuing with the appeal. Not an iota of evidence by way of any averment is provided, so that I have no material upon which to interrogate sufficiency.
9. Absent any showing of why there was no continuation with the appeal in the twelve months before it abated by operation of law, I am unable to exercise my discretion favorably to revive the appeal.
10. In the result, I find no merit in the application and the same is dismissed. I make no order as to costs.

DATED AND DELIVERED AT NAKURU THIS 31ST DAY OF JULY, 2025.

P. O. KIAGE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

